

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

AARON LAMBERT,

Plaintiff,

v.

Case 2:12-cv-02924-STA-cgc

**HMS INCORPORATED, d/b/a
THE SALON AT MACY'S and
ERICA SMITH,**

Defendants.

**REPORT AND RECOMMENDATION PURSUANT TO
RULE 41(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

On October 23, 2012, Plaintiff Aaron Lambert filed a pro se Complaint under Title VII of the Civil Rights Act of 1964 (Docket Entry “D.E.” #1). On January 16, 2013, the District Court entered an Order Denying Motion for Appointment of Counsel, Order of Partial Dismissal, and Order Directing Plaintiff to Further Identify Defendant (D.E. #5). This Order concluded that the Complaint did not assert a valid claim against Defendant Smith and dismissed Defendant Smith pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). This Order further directed Plaintiff to submit any further information about the corporate identity of Defendant HMS Incorporated d/b/a The Salon at Macy’s within thirty days to issue and effect service of process. The Court advised Plaintiff that a “failure to respond to this order within the time specified will result in the dismissal of this action without prejudice for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b).” Plaintiff did not timely respond to the District Court’s Order.

On March 28, 2013, the District Court referred all pretrial matters to the Magistrate Judge for determination or report and recommendation as appropriate (D.E. #8). On September 18, 2013, the Magistrate Judge issued an Order to Show Cause directing Plaintiff to “submit any further information he may have about the corporate identity of HMS within fourteen days of the entry of this Order.” (D.E. #11). The Magistrate Judge again advised Plaintiff that failure to comply with the Order would result in the Magistrate Judge recommending dismissal of the action without prejudice for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. To date, no response to the District Court’s Order or the Magistrate Judge’s Order to Show Cause has been filed.

Accordingly, it is recommended that Plaintiff’s claim against Defendant HMS Incorporated, d/b/a The Salon at Macy’s, be DISMISSED without prejudice for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

DATED this 8th day of October, 2013.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.